

SECTION 32. EMPLOYEE DRUG AND ALCOHOL USE AND DRUG AND ALCOHOL TESTING

(As amended July 12, 2005, October 21, 2008, July 12, 2011, July 24, 2012, June 30, 2015, and July 18, 2023)

32-1. Purpose. This section of the Personnel Regulations is intended to:

- (a) establish policies and procedures to deal with employee use of alcohol and drugs;
- (b) provide guidance to managers and supervisors on how to deal with an employee whose job performance may be affected by alcohol or drug use;
- (c) establish the conditions under which applicants and employees may be tested for alcohol or drug use;
- (d) ensure that the County complies with:
 - (1) Federal Motor Carrier Safety Administration (FMCSA) regulations (49 CFR Part 382, as amended) on the prevention of accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles;
 - (2) Federal Transit Administration (FTA) regulations (49 CFR Part 655, as amended) on the prevention of prohibited drug use and alcohol misuse by mass transit employees;
 - (3) U.S. Department of Transportation (DOT) regulations (49 CFR Part 40, as amended) for conducting drug and alcohol testing of employees covered by the FMCSA or FTA regulations; and
 - (4) The Federal Drug-Free Workplace Act (41 U.S.C. 701, et seq.).

32-2. Definitions.

- (a) ***Accident:*** An occurrence associated with the operation of a motor vehicle, if as a result:
 - (1) an individual dies;
 - (2) an individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or
 - (3) a vehicle incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle.
- (b) ***Actual knowledge:*** Actual knowledge by a supervisor that an employee has

engaged in the prohibited use of alcohol or drugs based on:

- (1) the supervisor's direct observation of the employee;
- (2) information provided by the employee's previous employer;
- (3) a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or drugs; or
- (4) an employee's admission of alcohol or drug use.

Direct observation as used in this definition means observation of alcohol or drug use and does not include observation of employee behavior or physical characteristics that may justify reasonable suspicion testing.

- (c) ***Adulterated specimen:*** A urine specimen that contains a substance that:
 - (1) is not a normal part of human urine; or
 - (2) is a normal part of human urine but is at a concentration that is not a normal physiological concentration.
- (d) ***Alcohol:*** The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.
- (e) ***Alcohol concentration:*** The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under these regulations.
- (f) ***Alcohol confirmation test:*** A test using an evidential breath testing device that:
 - (1) is conducted following a screening test with a result of 0.02 or greater; and
 - (2) provides quantitative data about the alcohol concentration.
- (g) ***Alcohol misuse:*** The consumption, in violation of the alcohol prohibitions in this Section, of a beverage, mixture, preparation, or prescription or over-the-counter medication that contains alcohol.
- (h) ***Alcohol screening device or ASD:*** A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.
- (i) ***Alcohol screening test:*** An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.
- (j) ***Alcohol use:*** The drinking or swallowing of any beverage, liquid mixture, or

preparation (including any medication), containing alcohol.

- (k) **Applicant:** An individual who has received a conditional job offer for a County merit system position. “Applicant” includes an employee who has applied for appointment to a position that is subject to pre-employment drug and alcohol testing.
- (l) **Breath Alcohol Technician or BAT:** A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.
- (m) **Cancelled test:** A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or that must otherwise be cancelled under applicable regulations. A cancelled test is neither a positive nor a negative test.
- (n) **Chain of custody:** The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector, including when the specimen is tested, results are received and determined to be positive or negative by the MRO, and until the specimen is destroyed.
- (o) **Commerce:**
 - (1) Any trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; and
 - (2) trade, traffic, and transportation in the United States that affects any trade, traffic, and transportation described in paragraph (1) of this definition.
- (p) **Commercial Driver’s License or CDL:** The license required under Federal and State law to operate certain commercial motor vehicles used in interstate and intrastate commerce to transport passengers or property.
- (q) **Commercial motor vehicle or CMV:** A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:
 - (1) has a gross combined weight rating of 11,794 or more kilograms or 26,001 or more pounds, which may include a towed unit with a gross vehicle weight rating of more than 4,536 kilograms or 10,000 pounds;
 - (2) has a gross vehicle weight rating of 11,794 or more kilograms or 26,001 or more pounds;
 - (3) is designed to transport 16 or more passengers, including the driver; or
 - (4) is of any size and is used in the transportation of materials:

- (A) found to be hazardous under the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)); and
 - (B) that require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).
- (r) **Confirmatory drug test:** A second analytical procedure performed on a urine specimen that:
- (1) is intended to identify and quantify the presence of a specific drug or drug metabolite;
 - (2) is independent of the initial test; and
 - (3) uses a different technique and chemical principle to ensure reliability and accuracy.
- (s) **Confirmed drug test:** A confirmation test result received by a Medical Review Officer from a laboratory.
- (t) **Designated Employer Representative:** An individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the County.
- (u) **Dilute specimen:** A specimen with creatinine and specific gravity values that are lower than expected for human urine. Following a “negative dilute” test result, the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test result will be considered a negative and no additional testing will be required unless directed to do so by the Medical Review Officer (MRO).
- (v) **Disabling damage:**
- (1) Damage to a motor vehicle that:
 - (A) keeps the vehicle from leaving the scene of the accident in its usual manner in daylight after simple repairs; or
 - (B) does not preclude driving the vehicle but would cause further damage to the vehicle if it is driven.
 - (2) Disabling damage does not include:
 - (A) damage that can be fixed temporarily at the scene of the accident

- without special tools or parts;
- (B) tire disablement without other damage even if no spare tire is available;
 - (C) headlight or taillight damage; or
 - (D) damage to turn signals, horn, or windshield wipers that make them inoperative.
- (w) **Driver:** A person who operates a commercial motor vehicle, including a full time, regularly employed driver, casual, intermittent, or occasional driver, leased driver, and an independent owner-operator contractor.
- (x) **Employee Assistance Program or EAP:** A program that offers confidential counseling services to employees and referral to other resources for treatment.
- (y) **Employee Medical Examiner or EME:** A licensed physician who performs the following functions on behalf of the County:
- (1) evaluates the functional abilities and limitations of an applicant or employee in relation to the individual's ability to perform essential job functions;
 - (2) acts as the medical review officer under drug and alcohol testing programs; and
 - (3) supervises clinical and administrative functions of the County's occupational medical programs and provides advice on medical issues.
- (z) **Evidential Breath Testing Device or EBT:** A device approved by NHTSA for the evidential testing of breath, placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices", and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.
- (aa) **High Potential Risk or HPR position:** A drug/alcohol designation that the County assigns to a position if:
- (1) the position is not a Public Safety, FMCSA_Safety-Sensitive, or FTA Safety-Sensitive position; and
 - (2) the duties associated with the position, when performed by an employee impaired by or under the influence of drugs or alcohol, would pose a risk of substantial harm to the employee, coworkers, the public, or to public or private property.

- (bb) **Illegal drug:** A controlled substance that is illegal to possess under local, state, or Federal law.
- (cc) **Initial drug test:** The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.
- (dd) **Initial validity test:** The first test used to determine if a specimen is adulterated, diluted, or substituted.
- (ee) **Invalid result:** The result reported by a laboratory for a urine specimen that contains an unidentified adulterant, contains an unidentified interfering substance, has an abnormal physical characteristic, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing testing or obtaining a valid drug test result. Employees do not have a right to obtain a test of their split specimen following an invalid result.
- (ff) **Laboratory:** A U.S. laboratory certified by:
 - (1) the State of Maryland;
 - (2) the U.S. Department of Health and Human Services (HHS) under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or
 - (3) both.
- (gg) **Low Potential Risk or LPR position:** A drug/alcohol designation that the County assigns to a position if the position would pose a low risk of harm to persons or property if the employee's performance of the duties of the position was affected by the use of alcohol or drugs.
- (hh) **Medical Review Officer or MRO:** A licensed physician who is responsible for:
 - (1) receiving and reviewing laboratory results generated by the County's drug testing program; and
 - (2) evaluating medical explanations for certain drug test results.
- (ii) **Non-negative specimen:** A urine specimen that the laboratory reports as:
 - (1) adulterated, substituted, or positive for a drug or drug metabolite;
 - (2) invalid; or
 - (3) both.

- (jj) ***Over-the-counter or OTC drug:*** A substance produced for medical use that is available for sale to the general public without a prescription from a physician or other medical practitioner.
- (kk) ***Performing a safety-sensitive function:*** An employee is considered to be performing a safety-sensitive function during any period in which the employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.
- (ll) ***Public Safety position:*** A drug/alcohol designation that the County assigns to a position with duties that involve the enforcement of criminal laws, the protection of the public, or both.
- (mm) ***FMCSA Safety-Sensitive position:*** A drug/alcohol designation that the County assigns to a position that:
- (1) requires the employee to maintain a commercial driver's license to operate a commercial motor vehicle; and
 - (2) is covered by the regulations of the Federal Motor Carrier Safety Administration or FMCSA.
- (nn) ***FTA Safety-Sensitive Transit position:*** A drug/alcohol designation that the County assigns to a position that:
- (1) requires the employee to maintain a commercial driver's license to perform certain safety-sensitive functions related to the County's operation of a public transit system; and
 - (2) is covered by the regulations of the Federal Transit Administration or FTA.
- (oo) ***Screening Test Technician:*** A person who instructs and assists employees in the alcohol testing process and operates an alcohol screening device.
- (pp) ***Split Specimen:*** The half of a collected urine "specimen" that is frozen and stored, rather than immediately tested. If the applicant or employee later requests a "split specimen test," the "split specimen" is removed from frozen storage and sent to an independent laboratory for testing.
- (qq) ***Split Specimen Test:*** The laboratory test conducted by a second laboratory on the portion of the collected urine specimen that was frozen and stored. The applicant or employee has a right to request a "split specimen test" if the test of the primary specimen produces a verified positive test result, or a verified adulterated or substituted test result.
- (rr) ***Substance Abuse Professional:*** A person who:

- (1) meets all the DOT requirements and evaluates an employee covered by DOT regulations who has violated a U.S. DOT drug and alcohol regulation; and
 - (2) makes recommendations concerning the employee's education, treatment, follow-up testing, and aftercare.
- (ss) ***Substance Addiction Counselor:*** A person who provides professional mental, emotional and behavioral health services needed for an individual to recover from drug and alcohol dependence and other behavioral issues.
- (tt) ***Substituted specimen:*** A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.
- (uu) ***Under the influence or impaired:*** A state or condition less than intoxication where consumption of alcohol or drugs has affected an individual's normal coordination, judgment, or discretion.
- (vv) ***Verified test:*** A drug test result or validity test result from a laboratory that has undergone review and final determination by the MRO.

32-3. Prevention of Prohibited Drug Use and Alcohol Misuse by County Employees under County Regulations.

- (a) ***Drug and alcohol prohibitions that apply to job applicants and County employees.***
- (1) An applicant for an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position must not:
 - (A) have, at the time a urine specimen is given for a drug test, an illegal drug in the applicant's body above the established cutoff levels for the drug; or
 - (B) adulterate or tamper with a urine specimen given for a drug test or substitute a different urine specimen for the applicant's specimen.
 - (2) A County employee (regardless of the drug/alcohol designation of the employee's position) must not:
 - (A) have an illegal drug in the employee's body while at work;
 - (B) perform the employee's job duties after using a prescription drug or other substance that impairs the employee's ability to perform the employee's job duties safely;

- (C) take an illegal drug while on duty, on County property, or in a County vehicle;
 - (D) consume alcohol while at work or on duty;
 - (E) be impaired by, or under the influence of, alcohol while at work, on County property, or on duty;
 - (F) operate a County vehicle or heavy or dangerous equipment with an illegal drug in the employee's body or while impaired by, or under the influence of, alcohol;
 - (G) operate a privately-owned vehicle with an illegal drug in the employee's body or while impaired by or under the influence of alcohol, if such operation occurs while the employee is at work or on duty;
 - (H) consume alcohol or have an open container of alcohol in a County vehicle or in a private vehicle that is being used by an employee while the employee is at work or on duty;
 - (I) possess, manufacture, sell, offer for sale, give, or purchase illegal drugs while on duty, on County property, or in a County vehicle;
 - (J) take, for the employee's own use or for sale, a drug prescribed for a client or other person with whom the employee comes in contact in the course of performing the employee's duties;
 - (K) take, for the employee's own use or for sale, a drug or alcohol for which the employee is responsible as part of the employee's duties;
 - (L) obtain alcohol or drugs by the promise of a favor or a threat based on the authority of the employee's position with the County; or
 - (M) adulterate, tamper with, or substitute a urine specimen for a drug test.
- (3) An employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position must not:
- (A) consume alcohol during the employee's lunch or other breaks;
 - (B) consume alcohol within 4 hours of the start of the employee's work day or shift; or
 - (C) consume alcohol while in stand-by status.

(b) ***Limited exceptions to drug and alcohol prohibitions.***

- (1) County law enforcement officers, including employees of the Board of License Commissioners who enforce alcohol control laws, may, if such actions are taken in accordance with applicable laws and regulations to further law enforcement objectives:
 - (A) transport alcohol or illegal drugs in official or private vehicles; and
 - (B) consume, possess, offer for sale, sell, give, or purchase illegal drugs or alcohol.
- (2) The Director of the Department of Alcohol Beverage Services may authorize the tasting of alcoholic beverages by County employees during work hours:
 - (A) for the purpose of product selection and quality control; and
 - (B) at supervised product knowledge seminars.

(c) ***Reporting required of employees charged with or convicted of drug or alcohol-related crimes.***

- (1) An employee who is convicted of a drug or alcohol-related offense that occurred in the workplace, on County property, while on duty, or while operating a County vehicle or equipment must report the conviction to the employee's supervisor within 5 calendar days.
- (2) An employee who is required to maintain a CDL as a condition of employment and who is charged with or convicted of a drug or alcohol-related offense must report the charge or conviction to the employee's supervisor within 5 calendar days.
- (3) For the purpose of this section, conviction includes probation before judgment, a plea of nolo contendere, or any imposition of a sentence for being under the influence of, or for having manufactured, distributed, dispensed, used, or possessed any controlled substance or alcohol.

(d) ***Employee responsibilities when using a prescription or OTC drug while on duty.***

- (1) Before taking a prescription or OTC drug, an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position should:
 - (A) ask the physician or other health care practitioner who prescribed the drug about how a prescription drug may affect the employee's

- job performance; and
- (B) read all warnings printed on a prescription or OTC drug container and any information provided with the drug that describes the effects of the drug.
- (2) An employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position must report to the employee's supervisor if the employee took before duty, or intends to take while on duty, a prescription or OTC drug that may affect the employee's performance. This must be done as soon as possible after reporting for duty or taking the drug.
 - (3) A supervisor of an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position must:
 - (A) discuss with the MRO, OMS medical staff, or the medical staff of a facility designated by OMS, the potential effect of a prescription drug or OTC drug that the employee has taken or plans to take; and
 - (B) follow the advice of medical staff and, if recommended, limit the employee's duties and ensure that the employee observes the recommended restrictions if the employee's duties include driving or operating machinery.
 - (4) The supervisor must not ask the employee or medical staff the name of the drug or the condition it is intended to treat. The employee must give this information to OMS staff.
 - (5) The MRO or OMS medical staff must, as necessary:
 - (A) consult with employees and supervisors about the effects of prescription drugs and OTC drugs on job performance; and
 - (B) designate other medical facilities to provide advice to employees and supervisors about the effects of prescription and OTC drugs during times when OMS staff is not available.
- (e) ***Allowing employees to consume alcohol at County events or functions.***
- (1) Alcoholic beverages should not be served to County employees at County-sponsored functions or at functions or events held on County property unless it is approved by the CAO.
 - (2) Upon written request, the CAO may allow alcohol to be served to County employees at a County function. A request for an exception must be made in writing at least 10 calendar days before the event.

- (3) If the CAO grants the request, the group or organization sponsoring the event must:
 - (A) ensure that employees are not required to attend or pressured to attend;
 - (B) ensure that responsible individuals will be present who will not drink alcohol;
 - (C) limit the amount of alcohol consumed by employees and others;
 - (D) ensure that food and nonalcoholic drinks are available;
 - (E) provide alternate transportation to a driver who is not fit to drive;
 - (F) monitor employee behavior; and
 - (G) stop rough or dangerous behavior.
- (4) Even if employees in other positions are allowed to consume alcohol at a County event, an employee in an HPR, Public Safety, FMCSA_Safety-Sensitive, or FTA Safety-Sensitive position must not consume alcohol if the employee:
 - (A) must return to duty performing HPR, Public Safety, or safety-sensitive functions after leaving the event;
 - (B) must begin work within 4 hours of the end of the function or within 4 hours after leaving the function; or
 - (C) is in stand-by status.

(f) Drug/alcohol designations of County positions.

- (1) The OHR Director must give each County position one of the following drug/alcohol designations:
 - (A) Low Potential Risk (LPR);
 - (B) High Potential Risk (HPR);
 - (C) Public Safety;
 - (D) FMCSA Safety-Sensitive; or
 - (E) FTA Safety-Sensitive.

- (2) The OHR Director must base position designations on:
 - (A) Federal and State drug and alcohol testing requirements;
 - (B) the nature of the duties of the position; and
 - (C) the potential for harm to the employee, the employee's coworkers, the public, or public and private property if the employee's job performance is affected by drug or alcohol use.

- (3) The OHR Director must designate a position as HPR if the position is not a Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position and involves:
 - (A) prescribing or administering drugs or performing medical procedures;
 - (B) working closely with inmate populations or with vulnerable populations such as children, the elderly, individuals with severe disabilities, abused persons, or recovering addicts;
 - (C) operating heavy or dangerous equipment, machines, or vehicles;
 - (D) working with dangerous materials or under hazardous conditions;
 - (E) providing support services, other than clerical support, to a public safety function or to public safety employees;
 - (F) carrying or having responsibility for large amounts of cash or other valuables;
 - (G) having regular access to evidence in criminal cases, crime data/information systems, or motor vehicle administration data; or
 - (H) having responsibility for the security of government facilities and property and the security of persons using government facilities or property.

- (4) All nonsupervisory and supervisory positions in the following occupational series are Public Safety positions:
 - (A) Police Officer;
 - (B) Deputy Sheriff;
 - (C) Firefighter/Rescuer;

- (D) Correctional Officer;
 - (E) Correctional Dietary Officer;
 - (F) Correctional Specialist;
 - (G) Resident Supervisor; and
 - (H) Alcohol & Tobacco Enforcement Specialist.
- (5) Additionally, any position with investigation and arrest authority and authorization to carry a firearm is a Public Safety position.
- (6) A position that is subject to drug and alcohol testing under the regulations of the U.S. DOT and FMCSA is an FMCSA Safety-Sensitive position. Section 32-4 of these Regulations lists Safety-Sensitive positions.
- (7) A position that is subject to drug and alcohol testing under the regulations of the U.S. DOT and FTA is an FTA Safety-Sensitive position. Section 32-5 of these Regulations lists FTA Safety-Sensitive positions.
- (8) A position may meet the definition of more than one designation. In such a case, the OHR Director must designate the position as follows:
- (A) if a position meets the definitions of HPR and Safety-Sensitive, it must be designated as Safety-Sensitive;
 - (B) if a position meets the definitions of HPR and FTA Safety-Sensitive, it must be designated as FTA Safety-Sensitive; and
 - (C) if the position meets the definitions of Public Safety and FMCSA Safety-Sensitive, it must be designated as FMCSA Safety-Sensitive.
- (g) ***Required check on the drug and alcohol testing records of applicants for FMCSA Safety-Sensitive and FTA Safety-Sensitive positions.***
- (1) Before an applicant or employee begins performing safety-sensitive duties for the first time, the County must, after obtaining the applicant or employee's written consent, request the following information from U.S. DOT-regulated employers who have employed the individual during any period during the 2 years before the date of the applicant's application or the employee's transfer:
- (A) alcohol tests with a result of 0.04 or higher;
 - (B) verified positive drug test results;

- (C) refusals to be tested (including verified adulterated or substituted drug test results);
 - (D) other violations of U.S. DOT drug and alcohol testing regulations; and
 - (E) if the employee violated a U.S. DOT drug and alcohol regulation, documentation of the employee's successful completion of U.S. DOT return-to-duty requirements (including follow-up tests).
- (2) To each U.S. DOT-regulated employer from whom the County requests information the County must provide written consent from the applicant or employee for the release of the information.
 - (3) If the applicant or employee refuses to provide written consent, the County must not employ the applicant in, or transfer the employee to, an FMCSA Safety-Sensitive or FTA Safety-Sensitive position.
 - (4) If the applicant or employee violated a U.S. DOT drug and alcohol regulation while employed, or under consideration for employment, by another employer but the previous employer does not have information about the return-to-duty process (because, for example, the employer did not hire an applicant who tested positive on a pre-employment test), the County must try to obtain this information from the employee.
 - (5) If the County obtains information that the applicant or employee violated a U.S. DOT drug and alcohol regulation, the County must not hire the applicant or use the employee to perform safety-sensitive functions unless the County also obtains information that the employee successfully completed a referral, evaluation, and treatment plan as described in U.S. DOT and FTA regulations.
 - (6) The County must obtain and review the information requested from U.S. DOT-regulated employers before the applicant is hired or the employee first performs safety-sensitive functions. If this is not feasible, the County may employ an applicant or allow an employee to perform safety-sensitive functions after 30 days have passed since the County made and documented a good faith effort to obtain this information.
 - (7) The County must maintain a written, confidential record of the information obtained or of the good faith efforts made to obtain the information. The County must retain this information for 3 years from the date of the employee's first performance of safety-sensitive duties.
 - (8) The County must also ask the applicant or employee if they have tested positive, or refused to test, on any pre-employment drug or pre-assignment

alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by U.S. DOT drug and alcohol testing rules during the past 2 years. If the applicant or employee admits that they had a positive test or a refusal to test, the County must not use the applicant or employee to perform safety-sensitive functions until and unless the applicant or employee documents successful completion of the return-to-duty process as required under U.S. DOT regulations.

- (9) The County, as a U.S. DOT-regulated employer from whom information is requested, must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry. The release of information must be in a written form that ensures confidentiality. The County must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.

(h) *Drug and alcohol testing of job applicants and employees.*

- (1) ***Goals of drug and alcohol testing program.*** The County government conducts drug and alcohol testing of job applicants and employees to:
- (A) identify those whose use of illegal drugs or misuse of alcohol may affect their job performance;
 - (B) discourage the use of illegal drugs and the misuse of alcohol and other legal substances by employees;
 - (C) motivate employees with active drug or alcohol problems to seek treatment;
 - (D) protect the health and safety of employees and the public;
 - (E) prevent accidents and reduce liability for employee accidents and misconduct;
 - (F) protect public and private property;
 - (G) ensure the efficiency and effectiveness of the County work force; and
 - (H) comply with Federal, State, and County regulations and County labor agreements that require drug and alcohol testing of applicants for certain jobs and employees who perform certain functions.
- (2) ***Factors that determine the type and frequency of drug and alcohol testing to which an employee is subject.*** The following factors determine

if an applicant or employee must undergo drug or alcohol testing and the type and frequency of testing:

- (A) the designation of the employee's position for drug and alcohol testing purposes;
- (B) Federal, State, and County regulations and County labor agreements that require testing of certain job applicants, employees, or both;
- (C) the employee's conduct, such as the employee's violation of the drug and alcohol prohibitions in these Regulations; and
- (D) the recommendation of a Substance Abuse Professional who has evaluated the employee for substance abuse or alcohol misuse.

(3) ***Pre-employment drug testing.***

- (A) Under Federal regulations, the County must conduct drug tests on all applicants for FMCSA Safety-Sensitive or FTA Safety-Sensitive positions before employment or before the employees first perform safety-sensitive duties.
- (B) Under State regulations, the County must conduct drug tests on all applicants for Police Officer, Deputy Sheriff, and certain correctional positions before appointment as part of the required medical evaluation.
- (C) The County conducts pre-employment drug tests on all applicants for:
 - (i) HPR positions; and
 - (ii) Public Safety positions not covered by (3)(B) above.

(4) ***Pre-Assignment alcohol testing.***

- (A) Federal regulations permit employers to test employees covered by Federal regulations for alcohol immediately before the employees perform safety-sensitive duties for the first time, provided that the employer performs pre-assignment testing on all covered employees.
- (B) The County conducts pre-assignment alcohol testing on all employees newly hired or assigned to FMCSA Safety-Sensitive and FTA Safety-Sensitive positions.

- (5) ***Probable cause or reasonable suspicion drug and alcohol testing.***
- (A) ***For all employees.***
- (i) The County may conduct probable cause or reasonable suspicion testing based on suspicion that the employee violated the drug and alcohol prohibitions in this Section.
- (ii) The required observations for probable cause or reasonable suspicion testing for alcohol, drugs, or both must be made by a supervisor who is trained as required under these Regulations.
- (B) ***For employees in FMCSA Safety-Sensitive positions.*** When the County conducts reasonable suspicion drug and alcohol testing of employees in FMCSA Safety-Sensitive positions under the authority of DOT Regulations, the County must conduct the testing under Section 32-4 of these Regulations.
- (C) ***For employees in FTA Safety-Sensitive positions.*** When the County conducts reasonable suspicion drug and alcohol testing of employees in FTA Safety-Sensitive positions under the authority of DOT Regulations, the County must conduct the testing under Section 32-5 of these Regulations.
- (D) ***Reasonable suspicion testing for employees in HPR or Public Safety positions.***
- (i) ***Alcohol tests.*** A supervisor may require an employee in an HPR or Public Safety position to submit to an alcohol test if the supervisor has reasonable suspicion to believe that the employee has violated the prohibitions in Section 32-3(a) concerning alcohol. The supervisor's determination that reasonable suspicion exists to require the employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the employee's appearance, behavior, speech, or body odor.
- (ii) ***Drug tests.*** A supervisor may require an employee to submit to a drug test when the supervisor has reasonable suspicion to believe that the employee has violated the prohibitions in Section 32-3(a) concerning drugs. The supervisor's determination that reasonable suspicion exists to require the employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the employee's appearance, behavior, speech, or body odors. The observations may

include indications of the chronic and withdrawal effects of drugs.

- (E) ***Probable cause testing for employees in LPR positions.***
- (i) A supervisor may require an employee in an LPR position to submit to a drug or alcohol test if the facts and circumstances within the supervisor's actual knowledge, and of which the supervisor has reasonable, trustworthy information, are enough to cause a reasonably cautious person to believe that a test will produce evidence that the employee has prohibited drugs or alcohol above the cutoff level in the employee's body. This is a higher level of certainty than is required for reasonable suspicion testing.
 - (ii) If possible, 2 supervisors at the work site should observe the employee, or review the relevant information about the employee, before requiring the employee to submit to a drug or alcohol test.
- (F) ***Requirement for supervisors to record observations.***
- (i) The supervisor must sign a written record of the observations that lead to an alcohol or drug test immediately after making the observation and before meeting with the employee. The alcohol or drug test must be done following the supervisor's meeting with the employee. If circumstances prevent the supervisor from making a written record immediately, the supervisor must make the written record of the observations within 24 hours of the test.
 - (ii) The supervisor of an FMCSA Safety-Sensitive or FTA Safety-Sensitive employee must comply with record-keeping requirements in Sections 32-4 and 32-5, as appropriate.
- (G) ***Employee status on and after day of test.***
- (i) On the day of a probable cause or reasonable suspicion test, the supervisor must place the employee tested in an appropriate leave status for the remainder of the day or shift.
 - (ii) After the day of the test and until the results of the test are known, the department director may:
 - (a) assign the employee other duties if:

- (1) the department director has cause to believe that the employee cannot perform the employee's regularly assigned duties without risking harm to the employee, the employee's coworkers, or to the public; and
 - (2) other duties are available; or
 - (b) place the employee in an appropriate leave status.
- (H) ***Negative test results.*** If the result of the probable cause or reasonable suspicion test is negative, the County must:
 - (i) restore the sick leave, annual leave, or compensatory time that the employee used, unless the employee was actually sick or otherwise unable to perform the employee's duties; and
 - (ii) reimburse the employee for lost wages and benefits if the employee was on LWOP, unless the employee was sick or otherwise unable to perform the employee's duties.
- (6) ***Post-accident testing.***
 - (A) The County must conduct post-accident drug and alcohol testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions under the procedures in Sections 32-4 (FMCSA Safety-Sensitive) and 32-5 (FTA Safety-Sensitive).
 - (B) The Director of Fire & Rescue Services must ensure that post-accident testing of Firefighters is conducted under applicable regulations or procedures.
- (7) ***Random drug and alcohol testing.***
 - (A) The County conducts random drug testing of:
 - (i) Police Officers assigned to specialized units that investigate drug-related offenses; and
 - (ii) employees and volunteers who serve as Firefighter/Rescuers.
 - (B) The County conducts random drug and alcohol testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions under the procedures in Sections 32-4 (FMCSA Safety-Sensitive) and 32-5 (FTA Safety-Sensitive).

- (8) ***Return-to-duty drug and alcohol testing.***
- (A) ***Return-to-duty testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions.*** The County must conduct return-to-duty drug and alcohol testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions under the procedures in Section 32-4 (FMCSA_Safety-Sensitive).
- (B) ***Return-to-duty testing of other employees.***
- (i) A department director may require a return-to-duty drug or alcohol test for an employee in an HPR or Public Safety position if the employee violated the drug or alcohol prohibitions in Section 32-3(a), had a verified positive drug test result, had a confirmed alcohol test result of 0.02 or higher, or refused to be tested.
- (ii) If a department director requires a return-to-duty test, the department director must not allow the employee to perform the duties of the employee's position unless the employee is tested and has a negative test result for drugs, alcohol, or both.
- (9) ***Follow-up drug and alcohol testing.***
- (A) ***Follow-up testing of employees in FMCSA Safety-Sensitive positions.*** The County must conduct follow-up drug and alcohol testing of employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions under the procedures in Sections 32-4 (FMCSA Safety-Sensitive).
- (B) ***Follow-up testing of other employees.*** After a County employee has refused to be tested, or tested positive on a drug or alcohol test, or after a medical provider determines that a County employee is in need of assistance in resolving problems associated with alcohol misuse, drug abuse, or both, and if the employee has not been dismissed or terminated for violating this regulation, the County must drug test, alcohol test, or drug and alcohol test the employee for a period of at least 12 months but no longer than 60 months. The employee's supervisor determines the duration and frequency of testing.
- (i) The County must conduct at least 6 alcohol tests over each 12-month period if:
- (a) the employee violated the alcohol prohibitions

or employee should complete the appropriate County or Federal form.

- (12) ***Collection of specimens for drug testing.***
- (A) OMS or a collection site/agent authorized by OMS must ensure that specimen collection is conducted:
- (i) under Federal or State regulations, as appropriate;
 - (ii) by a collector who completed the required qualification and refresher training and the initial proficiency demonstration;
 - (iii) under controlled circumstances that reduce the opportunity to tamper with the specimen or substitute a different specimen, with reasonable accommodation to privacy consistent with the type of test being conducted;
 - (iv) under direct observation for return-to-duty and follow-up testing of FMCSA Safety-Sensitive employees; and
 - (v) under direct observation if the County receives a drug test result indicating that the employee's urine specimen test was cancelled because it was invalid. The collection for the retest must take place under direct observation;
- (B) The collector must ensure that the specimen is properly identified and that the chain of custody is protected and recorded.
- (C) OMS must ensure that specimen collection for required testing of FMCSA Safety-Sensitive and FTA Safety-Sensitive employees or job applicants under U.S. DOT regulations is conducted as required under those regulations.
- (13) ***Requirements for laboratories that conduct drug testing.*** Tests must be conducted only by laboratories certified by the State of Maryland or by the U.S. Department of Health and Human Services to perform job-related forensic testing for drugs.
- (14) ***Substances tested.***
- (A) For drug testing conducted under U.S. DOT regulations, the laboratory must test specimens obtained from FMCSA Safety-Sensitive and FTA Safety-Sensitive applicants and employees for the substances indicated in Sections 32-4 and 32-5.
- (B) For drug testing under County authority, the laboratory must test specimens for the following drugs or their metabolites:

- (i) amphetamines;
 - (ii) barbiturates;
 - (iii) benzodiazepines;
 - (iv) cannabinoids (marijuana);
 - (v) cocaine;
 - (vi) methaqualone (quaalude);
 - (vii) methadone;
 - (viii) opiates;
 - (ix) phencyclidine (PCP); and
 - (x) propoxyphene (Darvon).
- (C) If information available to the department or OMS indicates that it is appropriate, OMS may ask the laboratory to test a specimen for any controlled dangerous substance included on the schedules in Section 5-101 of the Criminal Law Article of the Maryland Annotated Code. This does not apply to testing of FMCSA Safety-Sensitive and FTA Safety-Sensitive employees that is conducted under U. S. DOT regulations.
- (D) If the initial screen for drugs is positive, the laboratory must conduct a confirmation test.
- (E) The laboratory must conduct validity testing on the specimen to determine if certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.
- (15) ***Drug test results.***
- (A) The laboratory must report drug test results in writing directly to the Medical Review Officer (MRO) by any means that ensures accuracy and confidentiality. The laboratory reports results as:
- (i) negative;
 - (ii) negative – dilute;

- (iii) rejected for testing;
 - (iv) positive, with drug or metabolite noted;
 - (v) positive – dilute, with drug or metabolite noted, or
 - (vi) adulterated, substituted, or invalid result.
- (B) A positive test result indicates that the presence of a drug or metabolite was measured and confirmed at or above a predetermined cutoff level. If a drug or metabolite is present at a level below the predetermined cutoff, the test result will be reported as negative.
- (C) If the MRO receives test results reported as positive, adulterated, or substituted, the MRO must:
- (i) verify all test results as required under U.S.DOT regulations; and
 - (ii) speak with, or make all required attempts to speak with, the applicant or employee for whom the test result was reported.
- (D) If the applicant or employee states that there is a medical explanation for the test results, the MRO may:
- (i) require the applicant or employee to submit documentation from a treating physician or other relevant medical personnel;
 - (ii) contact the treating physician or other relevant medical personnel; or
 - (iii) require a clinical examination of the applicant or employee.
- (E) If the MRO determines that there is a legitimate medical explanation for a test result, the test result will be reported to the department as negative.
- (F) OMS must report to the Designated Employer Representative (DER) and to the applicant or employee if the test results are verified positive, or indicate a refusal to test because of adulteration or substitution. OMS must report both negative and positive test results to the DER for post-accident, reasonable suspicion, return to duty, and follow-up testing of employees.

(16) ***Retesting of employee after a canceled drug test.***

- (A) A canceled drug test is a test that has been declared invalid by the MRO and is neither a negative test result nor a confirmed positive test result. A canceled test includes a specimen rejected for testing by a laboratory.
- (B) If a pre-employment drug test for a non-employee applicant is canceled, the County must conduct another pre-employment drug test.
- (C) If a drug test for an employee is canceled, the County must drug test the employee again and receive a negative result before the employee is:
 - (i) transferred or reassigned to an HRP, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position; or
 - (ii) allowed to return to HRP, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive duties, because of the possible use of illegal drugs, prohibited alcohol use, or refusal to take a required drug or alcohol test.

(17) ***Breath alcohol testing procedures.***

- (A) OMS or a collection site authorized by OMS must ensure that alcohol testing is conducted:
 - (i) using the process required under Federal or State regulations, as appropriate; and
 - (ii) by a breath alcohol technician (BAT) or screening test technician who completed the required qualification and refresher training and the initial proficiency demonstration.
- (B) A BAT or Screening Test Technician must conduct an initial screening test using an Evidential Breath Testing Device (EBTD). If the result of the test is a breath alcohol concentration of less than 0.02, the test is considered negative and no further testing is authorized.
- (C) The BAT must conduct a confirmation test if the result of the screening test is an alcohol concentration of 0.02 or higher.

(18) ***Refusal to take a drug or alcohol test.***

- (A) Any of the following on the part of an employee is considered a refusal to submit to drug or alcohol testing and is considered to be the same as a verified positive drug test result or an alcohol test with an alcohol concentration of 0.02 or higher:
- (i) failing to appear for any test, except a pre-employment test, within a reasonable time, as determined by the County, after being directed to do so by a supervisor or other agent of the employer;
 - (ii) failing to remain at the testing site until the testing process is complete, but this does not apply to an applicant who leaves the testing site for a pre-employment drug test before the testing process begins;
 - (iii) failing to provide a urine specimen for a drug test or a breath sample for an alcohol test, but this does not apply to an applicant who leaves the testing site before the testing process begins for a pre-employment drug test;
 - (iv) in the case of a directly observed or monitored specimen collection for a drug test, failing to permit the observation or monitoring of the collection of a specimen;
 - (v) failing to provide enough urine for a drug test or adequate breath for an alcohol test when directed if it has been determined through a required medical evaluation that there was no adequate medical explanation for the failure;
 - (vi) failing or refusing to take an additional drug test the employer or collector has directed the employee to take;
 - (vii) failing to undergo a medical evaluation as required by the MRO or as directed by the County as part of the verification process;
 - (viii) failing to cooperate with any part of the testing process, such as refusing to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process, or engaging in conduct that obstructs the drug or alcohol testing process or makes the test impossible;
 - (ix) having a verified adulterated or substituted test result, as reported by the MRO;
 - (x) failing to sign the certification at Step 2 of the Alcohol

Testing Form; or

- (xi) failing to remain readily available for post-accident testing, including failing to notify the supervisor or other County representative of the employee's location after leaving the scene of the accident but before submitting to post-accident testing;
 - (B) A department director must not select an applicant for a position that requires a pre-employment drug test if the applicant refuses to be tested for drugs.
 - (C) If an employee in an HPR, Public Safety, FMCSA Safety-Sensitive, or FTA Safety-Sensitive position refuses to be tested for drugs or alcohol as required under these Regulations, the department director:
 - (i) must treat the refusal to take a drug test as the equivalent of a verified positive drug test result, unless it is a pre-employment drug test;
 - (ii) must treat the refusal to take an alcohol test as the equivalent of an alcohol test result of 0.02 or higher; and
 - (iii) may take adverse action against the employee.
 - (D) If an employee in an LPR position refuses to take a probable cause drug or alcohol test, the department director:
 - (i) must treat the refusal as the equivalent of a verified positive drug test result or an alcohol test result of 0.02 or higher; and
 - (ii) may take adverse action against the employee for insubordination.
- (19) **Consequences of a verified positive drug test result or an alcohol test result of 0.02 or higher.**
- (A) A department director must not select a job applicant who has a verified positive drug test result.
 - (B) A department director may take adverse action under County and department regulations against an employee who has a verified positive drug test result when applying for appointment to a position in another department.

- (C) OMS must refer an FMCSA_Safety-Sensitive or FTA Safety-Sensitive employee who has a verified positive drug test result or an alcohol test result of 0.04 or higher to a Substance Abuse Professional for evaluation. OMS must refer a County employee in any other type of position who has a verified positive drug test result or an alcohol test result of 0.02 or higher to a healthcare provider for evaluation and recommended treatment. The department director may take adverse action against the employee under County and department regulations.
- (D) A supervisor of an FMCSA Safety-Sensitive employee who has a confirmed alcohol test result of at least 0.02 but less than 0.04 must not allow the employee to operate a vehicle or heavy or dangerous machinery or equipment for at least 24 hours after the test. A supervisor of an FTA Safety-Sensitive employee who has a confirmed alcohol test result of at least 0.02 but less than 0.04 must not allow the employee to perform safety-sensitive functions for at least 8 hours after the test, unless the employee is tested again with a result of less than 0.02.
- (E) For an employee in an LPR, HPR, or Public Safety position, an alcohol test result of 0.02 or higher is considered a positive test result. A department director may take adverse action under County and department regulations against an employee in an LPR, HPR, or Public Safety position who has a confirmed positive alcohol test result.
- (F) A department director may take adverse action under County and department regulations against an employee who has a verified positive drug test result.
- (G) A department director must take adverse action under County and department regulations against an FMCSA Safety-Sensitive employee who has an alcohol test result of 0.04 or higher, or who has a verified positive drug test result.
- (H) A department director must not allow an employee in an HPR, Public Safety, or FMCSA Safety-Sensitive position who has a verified positive drug test result or an alcohol test result of 0.02 or higher to perform the duties of the employee's position until the employee has been evaluated by a Substance Abuse Professional for employees covered by U.S. DOT regulations or by a medical provider for other employees and:
 - (i) the Substance Abuse Professional or medical provider determines that the employee has completed the treatment recommended by that person and is able to return to the

employee's regular duties; or

- (ii) if no treatment is recommended by the Substance Abuse Professional or a medical provider, the evaluator determines that the employee does not have a drug or alcohol problem and is able to return to the employee's regular duties.

(I) Once an employee has been given medical clearance by a Substance Abuse Professional or a medical provider to return to work, the employee must report to OMS for a Return to Duty test. Upon reviewing the medical clearance and the return to work test result, the Employee Medical Examiner (EME), defined in Section 1-20, must perform a Return to Work evaluation to determine whether the employee should return to work.

(J) A department director may determine that an employee in an LPR position who has a confirmed positive drug test result or who has an alcohol test result of 0.02 or higher must not be allowed to perform some or all of the duties of the employee's position until the department is satisfied that the employee no longer has a drug or alcohol problem. The department must base the determination on a careful review of:

- (i) the employee's duties and responsibilities and if the employee is responsible for County funds, negotiable instruments, County stores, or valuable equipment; and
- (ii) the recommendation of the Substance Abuse Professional or medical provider who evaluated the employee.

(20) ***Rights of job applicants and employees subject to drug or alcohol testing.***

(A) OMS must advise an applicant or employee subject to drug testing of the following, before the collection of the specimen:

- (i) the reason for the test; and
- (ii) the name and address of the laboratory that will perform the test;

(B) If the applicant or employee refuses to be tested, OMS must tell the applicant or employee of the consequences for refusing.

(C) If the MRO has verified a drug test result as positive or as a refusal to test because of adulteration or substitution, the MRO must

notify the applicant or employee of the applicant's or employee's right to have a test conducted on the split specimen, as appropriate, by a different laboratory at the employee's expense.

- (i) The MRO must tell a DOT covered applicant or employee how to request the split specimen test, provide a list of certified labs for the applicant or employee to choose from, and give the applicant or employee at least 72 hours to request the test. Applicants or employees not covered by U.S. DOT regulations are given five days to request the test.
- (ii) An employee covered by U.S. DOT regulations may be required to pay for the test. Other employees are required to pay for the test before the test takes place.
- (iii) If the test conducted by a different laboratory is negative, the County must treat the test result as negative.

(21) ***Appeal rights of job applicants and employees subject to drug or alcohol testing.***

- (A) A job applicant may appeal to the MSPB under Section 35 of these Regulations if the applicant was denied employment or assignment to the position sought because of a verified drug test result, alcohol test result, or refusal to take a drug test.
- (B) If an employee receives an adverse action or the employee's conditions of employment were changed because of a drug or alcohol test result or a refusal to test, the employee may appeal under the following, as applicable:
 - (i) Section 34 or 35 of these Regulations;
 - (ii) relevant provisions of the Law Enforcement Officers' Bill of Rights; or
 - (iii) relevant provisions of the appropriate labor agreement.
- (C) An applicant or employee may not appeal the testing procedure or validity of the test result, unless the reason for challenging the procedure, or the validity of the result, is material to the basic fairness or reliability of the procedure, or the basic accuracy of the test result.

(i) ***Required referral, evaluation, and treatment.***

- (1) ***Montgomery County Employee Assistance Program (EAP).***
 - (A) The County has an Employee Assistance Program or EAP.
 - (B) The EAP provides:
 - (i) confidential counseling for employees; and
 - (ii) the services of a Substance Abuse Professional, who:
 - (a) is specifically trained and certified in the area of substance abuse; and
 - (b) can evaluate employees and refer them to appropriate treatment.
 - (C) There are no fees to employees for EAP services.
 - (D) An employee may seek the help of the EAP independently.
 - (E) With the approval of the employee's supervisor, an employee may use 2 hours of administrative leave to confer with an EAP counselor.
- (2) ***Referral, evaluation, and treatment for employees covered by U.S. DOT regulations.***
 - (A) If an employee has a verified positive drug test result, engaged in prohibited alcohol use, or refused to take a drug or alcohol test, and if the employee hasn't been dismissed or terminated as a result of such conduct, the employee's supervisor must:
 - (i) ensure that the employee is evaluated by a Substance Abuse Professional to determine if the employee is in need of assistance in resolving problems associated with illegal drug use or alcohol misuse;
 - (ii) give the employee contact information and the credentials of the Substance Abuse Professional;
 - (iii) ensure that, before the employee returns to FMCSA Safety-Sensitive duties, the employee has complied with the appropriate referral and evaluation provisions and takes, as appropriate:
 - (a) a return-to-duty drug test with a verified negative

- result;
 - (b) a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02; or
 - (c) both, if the Substance Abuse Professional determines that the employee should be tested for both drugs and alcohol.
- (B) OMS staff must ensure that the Substance Abuse Professional does not refer the employee to the Substance Abuse Professional's private practice from which the Substance Abuse Professional receives payment or to a person or organization in which the Substance Abuse Professional has a financial interest.
- (3) ***Referral, evaluation, and treatment for employees not covered by U.S. DOT regulations.***
- (A) If an employee has a verified positive drug test result, engaged in prohibited alcohol use, or refused to take a drug or alcohol test, and if the employee hasn't been dismissed or terminated as a result of such conduct, the employee's supervisor must:
- (i) refer the employee to the EAP;
 - (ii) give the employee information about the resources available to the employee to evaluate and resolve problems associated with illegal drug use or alcohol misuse, including contact information for counseling and treatment programs;
 - (iii) ensure that the employee is evaluated by a medical provider trained in substance abuse to determine if the employee is in need of assistance in resolving problems associated with illegal drug use or alcohol misuse;
 - (iv) give the employee contact information and the credentials of a medical provider affiliated with the County;
 - (v) ensure that, before the employee returns to work, the employee has complied with the appropriate referral and evaluation provisions and takes, as appropriate:
 - (a) a return-to-duty drug test with a verified negative result;
 - (b) a return-to-duty alcohol test with a result indicating

an alcohol concentration of less than 0.02; or

- (c) both, if the medical provider determines that the employee should be tested for both drugs and alcohol.

- (B) OMS staff must ensure that the medical provider does not refer the employee to the medical provider's private practice from which the medical provider receives payment or to a person or organization in which the medical provider has a financial interest.

(j) *Effects of drug abuse and alcohol misuse.*

- (1) An employee who misuses alcohol or uses illegal drugs may show it or may be an expert at masking the symptoms. The following indicate that an employee has a personal problem, which may be, but is not necessarily, a problem caused by drug abuse or alcohol misuse:
 - (A) deteriorating performance, including inconsistent work quality and productivity, erratic pace and concentration, and increased errors;
 - (B) poor attendance and increased absenteeism, early departures, extended meal periods, and unexplained absences;
 - (C) changes in attitude and physical appearance, including blaming others, avoiding supervisors and coworkers, inability to get along with others, deteriorating personal appearance, and poor morale among coworkers who spend time covering for the employee;
 - (D) increased accidents and injuries, careless handling of equipment or machinery, disregard for safety of others, and taking needless risks to raise productivity to make up for absences or periods of lowered productivity; and,
 - (E) financial or domestic problems such as separation, divorce, behavioral problems with children, or inability to pay bills.
- (2) An employee who recognizes symptoms of drug abuse or alcohol misuse in themselves should contact the EAP instead of ignoring or covering up the problem.
- (3) An employee who recognizes symptoms of drug abuse or alcohol misuse in a coworker should be supportive but refuse to cover up for the coworker. If the coworker's behavior is creating safety concerns or causing other serious problems, the employee should discuss it with a supervisor or suggest that the employee call an EAP counselor.

- (4) A supervisor must intervene by talking to the employee about the performance problems, explaining the consequences if performance expectations are not met, and being supportive, honest, and firm.
- (5) Supervisors and coworkers are not expected to diagnose drug abuse or alcohol misuse problems.

(k) *Employees who refer themselves for treatment.*

- (1) Employees who refer themselves for treatment for drug or alcohol abuse or obtain treatment for drug/alcohol abuse on their own initiative will not be subject to disciplinary action, absent evidence that they have violated this regulation, federal, state, or local law, or County or departmental regulations.
- (2) If an employee tells a supervisor that they need help to resolve a problem associated with prohibited drug use or alcohol misuse:
 - (A) the department director must not propose to dismiss or terminate the employee unless the employee makes the admission:
 - (i) after the employee is approached by a supervisor who intends to inform the employee that the employee has been selected for testing, but before the supervisor has the opportunity to notify the employee that the employee has been selected for a required drug or alcohol test;
 - (ii) after the employee learns that they have been selected for a required drug or alcohol test but before the employee is officially notified of the required drug or alcohol test;
 - (iii) after the employee is notified of a required drug or alcohol test but before the employee is tested for drugs or alcohol;
 - (iv) after the employee is tested for drugs or alcohol;
 - (v) after an accident;
 - (vi) after a confirmed positive drug test result or a confirmed alcohol test result with an alcohol concentration of 0.02 or greater, or in the case of an FMCSA Safety-Sensitive or FTA Safety-Sensitive employee, an alcohol concentration of 0.04 or greater;
 - (vii) after a refusal to be tested for drugs or alcohol; or
 - (viii) after conduct prohibited by Section 32-3 of these

Regulations; and

- (B) the County must refer the employee to a Substance Abuse Professional for evaluation, treatment, return-to-duty testing, and follow-up testing.

(l) *Education and training programs.*

- (1) An individual who performs the functions of a collector, MRO, BAT, Screening Test Technician, or Substance Abuse Professional must receive the qualification training and refresher training required under the appropriate Federal or State regulations.
- (2) The County must give employees information about the dangers of drug abuse and alcohol misuse and the resources available for treatment and rehabilitation.
- (3) The County must ensure that all new and existing employees in FMCSA Safety-Sensitive and FTA Safety-Sensitive positions receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use or alcohol misuse.
- (4) The County must ensure that supervisors of HPR, Public Safety, FMCSA Safety-Sensitive, and FTA Safety-Sensitive employees who may make reasonable suspicion determinations receive at least:
 - (A) 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use; and
 - (B) 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

(m) *Maintenance of Records.*

- (1) Drug and alcohol test results will be maintained by the Occupational Medical Section of OHR. They will be treated as confidential medical information and will be disclosed only to the following individuals:
 - (A) Those who have a bona fide need to know in order to make an administrative decision on the basis of the information, which may include the Department director, the employee's supervisor, and appropriate individuals in the Office of Human Resources or County Attorney's Office.
 - (B) The labor organization or other representative of the applicant or employee, if the applicant/employee provides written authorization

for such release.

- (C) Those to whom release is required by law, or authorized by the applicant/employee.
- (n) ***For further information.*** For further information about drug and alcohol testing, an employee may contact the staff of:
 - (1) OHR OMS Drug and Alcohol Program Coordinator at 240-777-5118 or email DAPM@montgomerycountymd.gov.

32-4. Prevention of Prohibited Drug Use and Alcohol Misuse by FMCSA Safety-Sensitive Employees under Federal Motor Carrier Safety Administration Regulations.

- (a) ***Applicability.*** This Section applies to any employee assigned to a Safety-Sensitive position on a full-time, part-time, temporary, or intermittent basis.
- (b) ***Safety-Sensitive positions.*** The following County positions are Safety-Sensitive positions:
 - (1) Equipment Operator I;
 - (2) Equipment Operator II;
 - (3) Equipment Operator III;
 - (4) Truck Driver/Warehouse Worker;
 - (5) Truck Driver Substitute/Warehouse Worker; and
 - (6) any other position that:
 - (A) requires the employee to maintain a CDL;
 - (B) involves the operation of a commercial motor vehicle; and
 - (C) is not an FTA Safety-Sensitive position.
- (c) ***Safety-sensitive functions.*** An employee in a Safety-Sensitive position is performing safety-sensitive functions at all times when the employee is:
 - (1) waiting at a County facility before being dispatched, unless the employee has been relieved from duty by the County;
 - (2) inspecting equipment as required by FMCSA Regulations, or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at

any time;

- (3) at the driving controls of a commercial motor vehicle in operation;
- (4) in or on a commercial motor vehicle other than while driving;
- (5) loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or giving or receiving receipts for shipments loaded or unloaded;
- (6) during all time spent performing the driver requirements associated with an accident; and
- (7) repairing, obtaining assistance, or remaining in attendance on a disabled vehicle.

(d) *Drug and alcohol prohibitions.*

- (1) ***Prohibitions for Safety-Sensitive employees.*** In addition to the prohibitions of Section 32-3, a Safety-Sensitive employee must not:
 - (A) report for duty or remain on duty requiring the performance of safety-sensitive duties while having an alcohol concentration of 0.02 or higher (an alcohol concentration of 0.02 – 0.039 requires removal from duty for 24 hours while an alcohol concentration of 0.04 or higher is a positive test and a violation under FMCSA regulations);
 - (B) use alcohol while performing a safety-sensitive function;
 - (C) perform a safety-sensitive function within 4 hours after using alcohol;
 - (D) use alcohol for 8 hours after an accident or until the employee undergoes a post-accident alcohol test, whichever occurs first, if the employee is required to take a post-accident alcohol test under these regulations; or
 - (E) refuse to submit to any type of drug or alcohol testing required under FMCSA regulations, except for pre-employment drug testing;
 - (F) report for duty or remain on duty requiring the performance of a safety-sensitive function when using a controlled substance, except when the use is under the instructions of a licensed medical practitioner who has advised the driver that the substance will not

- adversely affect the driver's ability to safely operate a commercial motor vehicle; or
- (G) report for duty, remain on duty, or perform a safety-sensitive function after:
 - (i) testing positive for a prohibited drug; or
 - (ii) adulterating or substituting a specimen for a drug test.
- (2) ***Prohibitions for supervisors of Safety-Sensitive employees.*** A supervisor must not permit a Safety-Sensitive employee to perform or continue to perform a safety-sensitive function if the supervisor has actual knowledge that the employee:
- (A) has an alcohol concentration of 0.02 or greater;
 - (B) is using alcohol while performing a safety-sensitive function;
 - (C) used alcohol within the last 4 hours;
 - (D) refused to submit to drug or alcohol testing required under FMCSA regulations; or
 - (E) used a prohibited drug, tested positive for a prohibited drug; or adulterated or substituted a specimen for a drug test.
- (3) ***Refusal to submit to drug or alcohol testing.*** Any of the following on the part of a Safety Sensitive employee is considered a refusal to submit to drug or alcohol testing and is considered to be the same as a verified positive drug test or an alcohol test with an alcohol concentration of 0.04 or higher:
- (A) failing to appear for any test, except a pre-employment test, within a reasonable time, as determined by the County, after being directed to do so by a supervisor or other agent of the employer;
 - (B) failing to remain at the testing site until the testing process is complete, but this does not apply to an applicant who leaves the testing site before the testing process begins for a pre-employment drug test;
 - (C) failing to provide a urine specimen for a drug test or a breath or saliva sample for an alcohol test required under FMCSA regulations, but this does not apply to an applicant who leaves the testing site before the testing process begins for a pre-employment drug test;

- (D) in the case of a directly observed or monitored specimen collection for a drug test, failing to permit the observation or monitoring of the collection of a specimen, including failing to follow instructions from the observer to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if any type of prosthetic or other device (that could be used to interfere with the collection process) is present;

Observed collections are required in the following circumstances:

- (1) All return-to-duty tests;
 - (2) All follow-up tests;
 - (3) Anytime the employee is directed to provide another specimen because the temperature of the original specimen was outside of the accepted temperature range of 90o-100oF;
 - (4) Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
 - (5) Anytime a collector observes that the employee has brought materials to the collection site or that the employee's conduct clearly indicates an attempt to tamper with a specimen;
 - (6) Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result;
 - (7) Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted, but the test had to be canceled because the test of the split specimen could not be performed.
- (E) failing to provide enough urine for a drug test or adequate breath or saliva for an alcohol test when directed if it has been determined through a required medical evaluation that there was no adequate medical explanation for the failure;

- (F) failing or refusing to take an additional drug test the employer or collector has directed the employee to take;
- (G) failing to undergo a medical evaluation as required by the MRO or as directed by the County as part of the verification process;
- (H) failing to cooperate with any part of the testing process, such as refusing to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process, or engaging in conduct that obstructs the drug or alcohol testing process or makes the test impossible;
- (I) having a verified adulterated or substituted test result, as reported by the MRO;
- (J) failing to sign the certification at Step 2 of the Alcohol Testing Form;
- (K) failing to remain readily available for post-accident testing, including failing to notify the supervisor or other County representative of the employee's location after leaving the scene of the accident but before submitting to post-accident testing;
- (L) possessing or wearing a prosthetic or other device that could be used to interfere with the collection process; or
- (M) admitting to the collector or MRO that the specimen provided has been adulterated or substituted.

(f) *Drug and alcohol testing.*

(1) *Procedures used.*

- (A) All drug testing and alcohol testing under FMCSA authority must comply with DOT regulations at 49 CFR Part 40, as amended. The DOT regulations at 49 CFR Part 40, as amended, are incorporated into these Regulations by reference.
- (B) The County must have a copy of 49 CFR Part 40, as amended, available to give to any employee or employee representative who requests it. These regulations describe:
 - (i) the procedures that will be used to test for the presence of drugs and alcohol;
 - (ii) the procedures that protect the employee and the integrity of the drug and alcohol testing processes;

- (iii) how the validity of test results are ensured;
 - (iv) how the test results are attributed to the correct employee;
 - (v) an employee's right to access the employee's drug and alcohol records; and
 - (vi) the required qualifications, role, and responsibilities of the MRO, Substance Abuse Professional, collection site, and laboratory.
- (C) The County must contract for drug testing services only with laboratories certified by the U.S. Department of Health and Human Services (DHHS).
- (D) Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if its content is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.
- (2) ***Prohibited drugs.*** When administering a drug test under FMCSA regulations, the County must ensure that employees are tested for the following drugs:
- (A) marijuana;
 - (B) cocaine;
 - (C) opiates;
 - (D) amphetamines; and
 - (E) phencyclidine.
- (3) ***Medical Review Officer (MRO).*** The MRO must be a licensed physician with knowledge of substance abuse disorders.
- (4) ***Notice required for drug and alcohol testing.***
- (A) Before performing a drug or alcohol test under FMCSA regulations, the supervisor must notify the employee:
 - (i) that the FMCSA requires the drug or alcohol test; and

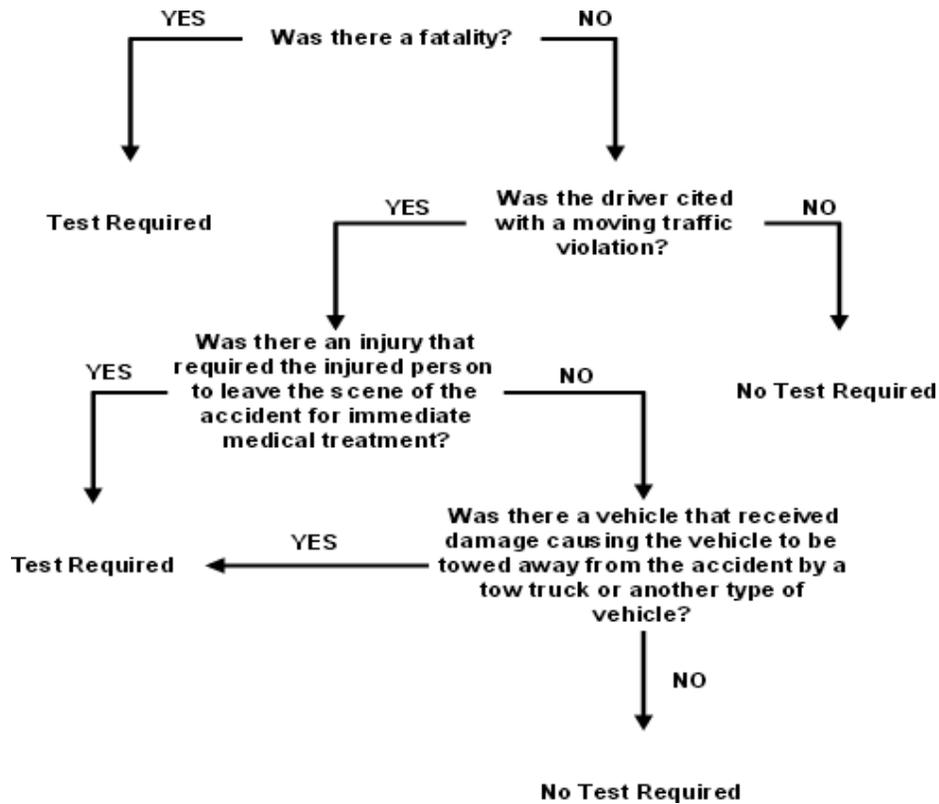
- (ii) if drug testing, of the identity of the DHHS certified laboratory that will conduct the drug test.
 - (B) A supervisor must not falsely represent that a test not required by FMCSA regulations is being given under FMCSA regulations.
- (5) ***Times when an employee is subject to testing.*** The County may require a Safety-Sensitive employee to submit to testing required under FMCSA regulations at the following times:
 - (A) at any time the employee is on duty for reasonable suspicion, random, return-to-duty, and follow-up testing for drugs;
 - (B) just before, just after, or while the employee is performing a safety-sensitive function for reasonable suspicion, random, return-to-duty, and follow-up alcohol testing;
 - (C) within 32 hours after an accident for post-accident drug testing; and
 - (D) within 8 hours after an accident for post-accident alcohol testing.
- (6) ***Alcohol testing of an on-call employee who reports for duty.***
 - (A) A supervisor who contacts an on-call employee to ask the employee to report for duty must ask if the employee has used alcohol and is unable to perform safety-sensitive functions.
 - (B) If an on-call employee acknowledges the use of alcohol but claims ability to perform safety-sensitive functions, the supervisor must ensure that the employee takes an alcohol test resulting in an alcohol concentration of less than 0.02 before the supervisor allows the employee to perform a safety-sensitive function.
- (g) ***Types of drug and alcohol testing.*** Under FMCSA regulations, a Safety-Sensitive employee must submit to different types of drug and alcohol testing under the circumstances described in this subsection. An applicant for such a position must submit to pre-employment drug testing as described in (1) below.
 - (1) ***Pre-employment and pre-assignment testing.***
 - (A) A non-employee applicant for a Safety-Sensitive position must produce a negative drug test result before employment.
 - (B) An employee applicant for a Safety-Sensitive position or an

employee transferred or temporarily assigned to a Safety-Sensitive position must produce a negative drug test result before performing safety-sensitive functions.

- (C) An employee newly hired or assigned to a Safety-Sensitive position must take a *pre-assignment* alcohol test with a result of less than 0.02 before performing safety-sensitive functions for the first time.

(2) ***Post-accident testing.***

- (A) An accident that involves operation of a commercial motor vehicle on a public road in commerce requires post-accident drug and alcohol testing of each surviving driver who was performing safety-sensitive functions with respect to the vehicle if the accident results in:
 - (i) the death of an individual;
 - (ii) a citation for the driver for a moving violation under State or local law if the accident involved:
 - (a) bodily injury to an individual that causes the individual to immediately receive medical treatment away from the scene of the accident; or
 - (b) disabling damage to one or more motor vehicles that requires the vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- (B) Post-accident testing is not required if the accident involves only:
 - (i) boarding or leaving a stationary motor vehicle; or
 - (ii) the loading or unloading of cargo.
- (C) The table below shows when a post-accident test is required.



- (D) If an alcohol test required by this section is not administered within 2 hours after the accident, a supervisor must prepare and maintain on file a record stating why the test was not promptly administered. If an alcohol test is not administered within 8 hours after the accident, the supervisor must stop attempts to administer an alcohol test and must prepare and maintain a record stating why the test was not administered. The County must submit these records to the FMCSA upon request.
- (E) A supervisor must ensure that an employee who must be tested for drugs is tested as soon as practicable after the accident. If a drug test required by this section is not administered within 32 hours after the accident, the supervisor must stop attempts to administer a drug test and prepare and maintain on file a record stating why the test was not promptly administered. The County must submit these records to the FMCSA upon request.
- (F) An employee who is subject to post-accident testing must remain readily available for such testing. The County may consider it a refusal to submit to testing if an employee who is subject to post-accident testing:
 - (i) fails to remain readily available for testing; or

- (ii) fails to notify the supervisor or other County representative of the employee's location if the employee leaves the scene of the accident before submitting to a test.
- (G) These Regulations do not:
 - (i) require the delay of necessary medical attention for injured persons after an accident; or
 - (ii) prohibit an employee from leaving the scene of an accident for the time necessary to obtain help in responding to the accident or to obtain necessary emergency medical care.
- (H) The County must provide each employee with necessary information, procedures, and instructions about post-accident testing before the employee operates a commercial motor vehicle, so that the employee will be able to comply with the requirements of this section.
- (I) If the County obtains the results of a breath or blood test for alcohol or a urine test for drugs that was conducted by Federal, State, or local officials having independent authority for the test, the County will consider the test results as meeting the requirements of this section, provided such tests conform to applicable Federal, State or local testing requirements.

(3) ***Random testing.***

- (A) The County must randomly select enough Safety-Sensitive employees for drug testing and for alcohol testing during each calendar year to equal an annual rate for each type of testing that is not less than the minimum annual percentage rate determined by the FMCSA Administrator for each type of random testing.
- (B) Employees must be selected for testing by the use of a scientifically valid method such as a computer-based random number generator matched with employee social security numbers or other comparable identifying numbers.
- (C) Each employee in a Safety-Sensitive position must:
 - (i) be in a pool of employees subject to random drug and alcohol testing;
 - (ii) have an equal chance of selection for testing each time selections are made; and

- (iii) remain in the pool subject to testing even after being tested.
- (D) The County must ensure that random drug and alcohol tests are unannounced and that the dates for administering random tests are spread reasonably throughout the entire calendar year.
- (E) To calculate the total number of covered employees eligible for random testing throughout the year, the County must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Only Safety-Sensitive employees are in the FMCSA random testing pool and all employees in Safety-Sensitive positions must be in the random pool. The total number of covered employees and the random testing rate must be computed once per month.
- (F) A covered employee must be randomly tested for alcohol at the following times: just before, just after, or while the employee is performing safety-sensitive functions.
- (G) An employee selected for a random test must proceed to the test site immediately after being notified of selection. If at the time of notification the employee is performing a safety-sensitive function other than driving a commercial motor vehicle, the supervisor must make arrangements to relieve the employee as soon as possible.

(4) *Reasonable suspicion testing.*

- (A) A supervisor must require a covered employee to submit to an alcohol test when the supervisor has reasonable suspicion to believe that the employee has violated the prohibitions in Section 32-4(d) concerning alcohol. The supervisor's determination that reasonable suspicion exists to require the employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the employee's appearance, behavior, speech, or body odors.
- (B) A supervisor must require a covered employee to submit to a drug test when the supervisor has reasonable suspicion to believe that the employee has violated the prohibitions in Section 32-4(d) concerning drugs. The supervisor's determination that reasonable suspicion exists to require the employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the employee's appearance, behavior, speech, or body odors. The observations may include indications of the chronic and withdrawal effects of drugs.

- (C) The required observations for reasonable suspicion testing for alcohol, drugs, or both must be made by a supervisor who is trained as required under FMCSA and these regulations. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test must not conduct the alcohol test.
- (D) If the facts and circumstances within the supervisor's knowledge are enough to cause a reasonably cautious person to believe that the employee may be under the influence of a member of a class of controlled drugs whose use isn't prohibited under U.S. DOT Regulations, the supervisor may direct the employee to submit a urine specimen for reasonable suspicion testing under County authority (Section 32-3(h)(5)(A)) that is not derived from U.S. DOT Regulations.
- (E) Alcohol testing is authorized by this section only if the observations required by paragraph (A) of this subsection are made during, just before, or just after the employee is performing safety-sensitive functions. A supervisor may direct an employee to undergo reasonable suspicion testing only while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has stopped performing such functions.
- (F) If an alcohol test required by this section is not administered within 2 hours after the determination under paragraph (A), the supervisor must prepare and maintain on file a record stating why the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within 8 hours following the determination under paragraph (A), the supervisor must stop attempts to administer an alcohol test and state in the record the reasons for not administering the test.
- (G) Even if a reasonable suspicion alcohol test is not performed under this section, a driver must not report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse and the supervisor must not permit the driver to perform or continue to perform safety-sensitive functions, until:
 - (i) an alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or
 - (ii) 24 hours have passed since the determination under paragraph (A) that there was reasonable suspicion to believe that the driver had violated the prohibitions

concerning the use of alcohol.

- (H) Except as provided in paragraph (G) above, a supervisor must not take any action under this section against an employee based solely on a belief that the employee's behavior or appearance indicates prohibited alcohol use unless an alcohol test shows that the employee used alcohol.
- (I) A supervisor must make a written record of the observations that lead to a reasonable suspicion test. The supervisor who made the observations must sign the record within 24 hours of the observed behavior or before the results of the alcohol or drug test are released, whichever is earlier.

(5) ***Return-to-duty testing.***

- (A) ***After prohibited drug use or refusal to take a drug test.*** If the County does not dismiss or terminate an employee who refuses to submit to a drug test or has a verified positive drug test result, the County must ensure that the following takes place before the employee is allowed to return to safety-sensitive duties:
 - (i) the County refers the employee to a Substance Abuse Professional who conducts an evaluation, and refers the employee for appropriate education and treatment;
 - (ii) the Substance Abuse Professional conducts a face-to-face follow-up evaluation to determine if the employee has actively participated in the recommended education and treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations;
 - (iii) the employee takes a return-to-duty drug test, under direct observation if required, with a verified negative result; and
 - (iv) if recommended by the Substance Abuse Professional, the employee takes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
- (B) ***After prohibited alcohol use or refusal to take an alcohol test.*** If the County does not dismiss or terminate an employee who engages in prohibited alcohol use or refuses to submit to a required alcohol test, the County must ensure that the following takes place before the employee is allowed to return to safety-sensitive duties:
 - (i) the County refers the employee to a Substance Abuse

Professional who conducts an evaluation and refers the employee for appropriate education and treatment;

- (ii) the Substance Abuse Professional evaluates the employee to determine if the employee properly followed the recommendations for action by the Substance Abuse Professional, including participation in a rehabilitation program;
 - (iii) the employee takes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02; and
 - (iv) if recommended by the Substance Abuse Professional, the employee takes a return-to-duty drug test with a verified negative result.
- (6) ***Follow-up testing.*** The County must ensure that an employee who returns to duty after a required evaluation by a Substance Abuse Professional under Section 32-4(g)(5) is subject to unannounced follow-up drug testing, alcohol testing, or both, as follows:
- (A) the employee must take at least 6 unannounced follow-up tests during the first 12 months after the employee returns to duty;
 - (B) follow-up testing may last for up to 5 years to deter or detect a relapse, based on the Substance Abuse Professional's assessment of the employee's unique situation and recovery progress and the recommendation submitted in the report to the County;
 - (C) follow-up testing, performed under direct observation if required, is in addition to random, post-accident, reasonable suspicion, and return-to-duty testing.
- (h) ***Retesting of employees.***
- (1) ***Retesting of employee with an alcohol concentration of 0.02 or greater but less than 0.04.***
- (A) The County must not allow an employee who is tested and found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:
 - (i) the employee's alcohol concentration is tested again and measures less than 0.02; or

- (ii) the start of the employee's next regularly scheduled duty period, but not less than 24 hours after the test.
 - (B) Except as provided in paragraph (A) above, which requires that an employee with an alcohol concentration of between 0.02 and 0.039 be removed from safety-sensitive duties for up to 24 hours, the County must not take any action under FMCSA authority against an employee based solely on the results of a test conducted under FMCSA authority showing an alcohol concentration of less than 0.04.
- (2) ***Retesting of employee after a canceled drug test.***
 - (A) A cancelled drug test is a test that has been declared invalid by the MRO and is neither a verified positive nor a verified negative test result. A cancelled test includes a specimen rejected for testing by a laboratory.
 - (B) If a non-employee applicant's drug test is cancelled, the applicant must take another pre-employment drug test.
 - (C) If an employee's drug test is cancelled, the employee must take another drug test with a verified negative result before the County:
 - (i) transfers or reassigns the employee to a Safety-Sensitive position; or
 - (ii) allows the employee to return to safety-sensitive duties, because of the possible use of prohibited drugs, prohibited alcohol use, or refusal to take a required drug or alcohol test.
 - (D) OMS must ensure that specimen collection is conducted under direct observation if the County receives a drug test result indicating that the employee's urine specimen test was cancelled because it was invalid. The collection for the retest is required to take place under direct observation at the direction of the MRO.
- (i) ***Required referral, evaluation, and treatment.*** For information about required referral, evaluation, and treatment, see Section 32-3(i).
- (j) ***Effects of drug abuse and alcohol misuse.*** See Section 32-3(j) for information about the effects of drug abuse and alcohol misuse.
- (k) ***Education and training programs.*** See Section 32-3(l) for education and training programs and requirements for supervisor training.

32-5. Prevention of Prohibited Drug Use and Alcohol Misuse by FTA Safety-Sensitive Employees Under Federal Transit Administration Regulations

- (a) ***Application of section.*** This Section applies to any employee assigned to an FTA Safety-Sensitive position on a full-time, part-time, temporary, or intermittent basis.

- (b) ***Safety-sensitive functions.*** An employee of the Departments of General Services or Transportation who performs any of the following safety-sensitive functions at any time is in an FTA Safety-Sensitive position:
 - (1) operating a Montgomery County revenue service vehicle, including when not in revenue service;
 - (2) operating a Montgomery County nonrevenue service vehicle to provide ancillary services for transit operations, when the operator is required to hold a Commercial Driver's License (CDL);
 - (3) controlling dispatch or movement of a Montgomery County revenue service vehicle; or
 - (4) maintaining (including repairing, overhauling, and rebuilding) a Montgomery County revenue service vehicle or equipment used in revenue service.

- (c) ***FTA Safety-Sensitive positions.*** The following are FTA Safety-Sensitive positions if the employee must have a CDL or operates, dispatches, controls, or maintains Montgomery County transit vehicles and operations:
 - (1) Apprentice Autobody Repairer;
 - (2) Apprentice Mechanic;
 - (3) Autobody Repairer;
 - (4) Bus Operator;
 - (5) Communications Supervisor (Central Dispatch)
 - (6) Crew Chief;
 - (7) Mechanic;
 - (8) Mechanic's Helper;
 - (9) Mechanic Leader;

- (10) Motor Pool Attendant;
 - (11) Program Specialist (Trainer);
 - (12) Transit Coordinator;
 - (13) Transit Equipment Technician; and
 - (14) Welder.
- (d) ***Supervisor as FTA Safety-Sensitive employee.*** A supervisor is an FTA Safety-Sensitive employee only if the supervisor actually performs safety sensitive functions.
- (e) ***Drug and alcohol prohibitions.***
- (1) ***Prohibitions for FTA Safety-Sensitive employees.*** In addition to the prohibitions of Section 32-3, an FTA Safety-Sensitive employee must not:
 - (A) use a prohibited drug;
 - (B) report for duty, remain on duty, or perform a safety-sensitive function after testing positive for a prohibited drug;
 - (C) report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or higher;
 - (D) consume alcohol while performing a safety-sensitive function;
 - (E) consume alcohol within 4 hours prior to performing a safety-sensitive function;
 - (F) consume alcohol while the employee is on-call;
 - (G) consume alcohol for 8 hours following an accident or until the employee undergoes a post-accident alcohol test, whichever occurs first, if the employee is required to take a post-accident alcohol test; or
 - (H) refuse to submit to any of the following types of drug or alcohol testing, if required under FTA regulations:
 - (i) pre-assignment alcohol testing;
 - (ii) reasonable suspicion;
 - (iii) post-accident;

- (iv) random;
 - (v) return-to-duty; or
 - (vi) follow-up.
- (2) ***Prohibitions for supervisors.*** A supervisor must not permit an FTA Safety-Sensitive employee to perform or continue to perform safety-sensitive functions if the supervisor has actual knowledge that the employee:
- (A) has an alcohol concentration of 0.02 or greater;
 - (B) consumed alcohol while performing safety-sensitive functions;
 - (C) consumed alcohol within 4 hours of performing a safety-sensitive function;
 - (D) used a prohibited drug or tested positive for a prohibited drug; or
 - (E) refused to submit to drug or alcohol testing required under FTA regulations.
- (3) ***Use of medications containing alcohol.*** The use of a prescription or over-the-counter medicine that contains alcohol is considered to be use of alcohol and is subject to the FTA prohibitions on alcohol misuse.
- (4) ***Refusal to submit to drug or alcohol testing.*** Any of the following on the part of an employee is considered a refusal to submit to drug or alcohol testing and is considered to be the same as a verified positive drug test or an alcohol test with an alcohol concentration of 0.04 or higher:
- (A) failing to provide a urine or breath sample without a genuine inability to provide a specimen, as determined by a medical evaluation;
 - (B) engaging in conduct that clearly obstructs the drug or alcohol testing process or makes the test impossible;
 - (C) failing to remain readily available for post-accident testing, including failing to notify the supervisor or other County representative of the employee's location after leaving the scene of the accident but before submitting to post-accident testing;
 - (D) refusing verbally or in writing to provide a urine or breath sample for testing;
 - (E) failing to arrive, or arrive in a timely manner, for a required test, except a pre-employment test;

- (F) failing to remain at the testing site until the testing process is complete, but an employee who leaves the testing site before the testing process begins for a pre-employment test has not refused to test;
- (G) failing to undergo a medical evaluation as required by the Medical Review Officer or as directed by the County as part of the verification process;
- (H) in the case of a directly observed or monitored specimen collection for a drug test, failing to permit the observation or monitoring of the provision of a specimen, including failing to follow instructions from the observer to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if any type of prosthetic or other device (that could be used to interfere with the collection process) is present;

Observed collections are required in the following circumstances:

- (1) All return-to-duty tests;
- (2) All follow-up tests;
- (3) Anytime the employee is directed to provide another specimen because the temperature of the original specimen was outside of the accepted temperature range of 90^o- 100^oF;
- (4) Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
- (5) Anytime a collector observes that the employee has brought materials brought to the collection site or that the employee's conduct clearly indicates an attempt to tamper with a specimen;
- (6) Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result;
- (7) Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted, but the test had to be canceled because the test of the split specimen could not be performed; and

- (I) failing to sign the certification at Step 2 of the Alcohol Testing Form.
- (J) failing or declining to take an additional test that the employer or collector directs the employee to take;
- (K) submitting an adulterated or substituted specimen, if this is verified by the MRO;
- (L) possessing or wearing a prosthetic or other device that could be used to interfere with the collection process; or
- (M) admitting to the collector or MRO that the specimen provided has been adulterated or substituted.

(f) ***Drug and alcohol testing.***

(1) ***Procedures used.***

- (A) All drug testing and alcohol testing under FTA authority must comply with DOT regulations at 49 CFR Part 40, as amended. The DOT regulations at 49 CFR Part 40, as amended, are incorporated into these Regulations by reference.
- (B) The County must have a copy of 49 CFR Part 40, as amended, available to give to any employee or employee representative who requests it. The DOT regulations describe:
 - (i) the procedures that will be used to:
 - (a) test for the presence of drugs;
 - (b) test for the presence of alcohol;
 - (c) protect the employee and the integrity of the drug and alcohol testing processes;
 - (d) safeguard the validity of the test results; and
 - (e) ensure the test results are attributed to the correct employee;
 - (ii) an employee's right to access the employee's drug and alcohol records; and
 - (iii) the required qualifications, role, and responsibilities of the medical review officer, substance abuse professional, collection site, and laboratory.

- (C) The County must contract for drug testing services only with laboratories certified by the U.S. Department of Health and Human Services (DHHS).
 - (D) Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if its content is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.
- (2) ***Prohibited drugs.*** When administering a drug test under FTA regulations, the County must ensure that employees are tested for the following drugs:
- (A) marijuana;
 - (B) cocaine;
 - (C) opiates;
 - (D) amphetamines; and
 - (E) phencyclidine.
- (3) ***Medical Review Officer (MRO).*** The MRO must be a licensed physician with knowledge of substance abuse disorders.
- (4) ***Notice required for drug and alcohol testing.***
- (A) Before performing a drug or alcohol test under FTA regulations, the supervisor must notify the employee that the FTA requires the drug or alcohol test.
 - (B) A supervisor must not falsely represent that a test not required by FTA regulations is being given under FTA regulations.
- (5) ***Times when an employee is subject to testing.*** The County may require an FTA Safety-Sensitive employee to submit to testing required under FTA regulations at the following times:
- (A) reasonable suspicion, random, return-to-duty, and follow-up testing for prohibited drugs at any time the employee is on duty;
 - (B) reasonable suspicion, random, return-to-duty, and follow-up alcohol testing just before, just after, or while the employee is performing a safety sensitive function.

- (C) post-accident drug testing within 32 hours after an accident; and
 - (D) post-accident alcohol testing within 8 hours after an accident.
- (6) ***Alcohol testing of an on-call employee who reports for duty.***
- (A) A supervisor who contacts an on-call employee to ask the employee to report for duty must ask if the employee has used alcohol and is unable to perform safety-sensitive functions.
 - (B) If an on-call employee acknowledges the use of alcohol but claims ability to perform safety-sensitive functions, the supervisor must ensure that the employee takes an alcohol test with an alcohol concentration of 0.02 or less before the supervisor allows the employee to perform a safety sensitive function.
- (g) ***Types of drug and alcohol testing.*** Under FTA regulations, an FTA Safety-Sensitive employee must submit to different types of drug and alcohol testing under the circumstances described in this subsection. A non-employee applicant for such a position must submit to pre-employment drug testing as described in (1)(A) below.
- (1) ***Pre-employment drug and alcohol testing.***
- (A) An applicant for an FTA Safety-Sensitive position must produce a negative drug test result before employment.
 - (B) An employee transferred or temporarily assigned to an FTA Safety-Sensitive position must produce a negative drug test result before performing safety-sensitive functions.
 - (C) An employee newly hired or assigned to an FTA Safety-Sensitive position must take a pre-employment breath alcohol test with a result of less than 0.02 before performing safety-sensitive functions for the first time. All pre-employment alcohol tests will be conducted using the procedures set forth in 49 CFR Part 40.
- (2) ***Reasonable suspicion testing.***
- (A) A trained supervisor must direct an employee to submit to drug or alcohol testing if, based on specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech, or body odors, the supervisor has a reasonable basis to believe that the employee has used a prohibited drug or violated a prohibition in Section 32-5(e) concerning alcohol use. The required

observations must be made by a supervisor who is trained as required under Section 32-3(k)(4) in detecting the signs and symptoms of alcohol misuse.

- (B) Alcohol testing is authorized under FTA regulations only if the supervisor's observations are made just before, just after, or while the employee is performing a safety-sensitive function.
- (C) The supervisor who makes the determination that an alcohol test is appropriate must not administer the test.
- (D) If reasonable suspicion exists to test the employee for alcohol but no test is administered at that time, the supervisor must not allow the employee to perform safety-sensitive functions until:
 - (i) a test is administered and the employee has an alcohol concentration of less than 0.02; or
 - (ii) the start of the employee's next regularly scheduled duty period but at least 8 hours after the determination was made that reasonable suspicion existed for a test.
- (E) If a reasonable suspicion test for alcohol is not administered within 2 hours following the determination under Section 32-5(g)(2)(A), the supervisor must prepare and maintain on file a record stating the reasons the test was not promptly administered.
- (F) If an alcohol test is not administered within 8 hours following the supervisor's determination that a test is required, the supervisor must stop attempts to administer an alcohol test and state in the record the reasons for not administering the test.
- (G) A supervisor must require a covered employee to submit to a drug test when the supervisor has reasonable suspicion to believe that the employee has violated the prohibitions in Section 32-5(e) concerning drugs. The supervisor's determination that reasonable suspicion exists to require the employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the employee's appearance, behavior, speech, or body odors. The observations may include indications of the chronic and withdrawal effects of drugs. The required observations must be made by a supervisor who is trained as required under Section 32-3(k)(4) in detecting the signs and symptoms of prohibited drug use.
- (H) If the facts and circumstances within the supervisor's knowledge are enough to cause a reasonably cautious person to believe that

the employee may be under the influence of a member of a class of controlled drugs whose use isn't prohibited under U.S. DOT Regulations, the supervisor may direct the employee to submit a urine specimen for reasonable suspicion testing under County authority (Section 32-3(h)(5)(A) that is not derived from U.S DOT Regulations.

(3) ***Post-accident testing.***

- (A) ***Accident requiring drug and alcohol testing.*** An accident that requires post-accident drug and alcohol testing is an occurrence associated with the operation of a vehicle used for mass transit or for ancillary services that results in:
- (i) the death of an individual;
 - (ii) bodily injury to an individual that causes the individual to immediately receive medical treatment away from the scene of the accident; or
 - (iii) one or more vehicles incurring disabling damage and receiving transportation away from the scene by a tow truck or other vehicle.
- (B) ***Fatal accident.*** As soon as practicable following an accident involving the loss of human life, the responsible supervisor must have the following employees tested for drugs and alcohol:
- (i) each surviving employee operating the mass transit vehicle at the time of the accident; and
 - (ii) any other employee whose performance could have contributed to the accident, as determined by the supervisor using the best information available at the time of the decision.
- (C) ***Nonfatal accident.*** As soon as practicable following an accident covered by subsections (3)(A)(ii) or (iii) above but not involving the loss of human life, the responsible supervisor must have the following employees tested for drugs and alcohol:
- (i) each employee who was operating the vehicle at the time of the accident unless the supervisor determines, using the best information available at the time of the decision, that the employee's performance can be completely discounted as a contributing factor to the accident; and

- (ii) any other employee whose performance could have contributed to the accident, as determined by the supervisor using the best information available at the time of the decision.
 - (D) A supervisor must ensure that an employee required to be tested for drugs is tested as soon as practicable and within 32 hours of the accident.
 - (E) If an employee required to be tested for alcohol is not tested within 2 hours following an accident, the supervisor must prepare and maintain on file a record stating the reason why the test was not promptly administered. If an alcohol test is not administered within 8 hours following the accident, the supervisor must stop attempts to administer an alcohol test and update the written record.
 - (F) The County may consider it a refusal to submit to testing if an FTA Safety-Sensitive employee who is subject to post-accident testing:
 - (i) fails to remain readily available for testing; or
 - (ii) fails to notify the supervisor or other County representative of the employee's location if the employee leaves the scene of the accident before submitting to a test.
 - (G) These Regulations do not:
 - (i) require the delay of necessary medical attention for the injured after an accident; or
 - (ii) prohibit an employee from leaving the scene of an accident for the time necessary to obtain help in responding to the accident or to obtain necessary emergency medical care.
- (4) ***Random testing.***
- (A) The County must randomly select enough FTA Safety-Sensitive employees for drug testing and for alcohol testing during each calendar year to equal an annual rate for each type of testing that is not less than the minimum annual percentage rates for random drug testing and for random alcohol testing determined by the FTA.
 - (B) The County must ensure that random drug and alcohol tests are unannounced and that the dates for administering random tests are spread reasonably throughout the entire calendar year. Random tests will be reasonably spread through the day, week, and hours

when safety sensitive functions are performed.

- (C) Every employee in an FTA Safety-Sensitive Transit position must be in a pool of employees subject to random drug and alcohol testing. Each employee must have an equal chance of selection for testing and must remain in the pool subject to testing even after being tested.
- (D) Employees must be selected for testing by the use of a scientifically valid method such as a computer-based random number generator matched with employee social security numbers.
- (E) A covered employee must be randomly tested for alcohol only just before, just after, or while the employee is performing safety-sensitive functions.
- (F) An employee selected for a random test must proceed to the test site immediately after being notified of selection. If the employee is performing a safety-sensitive function at the time of notification, the supervisor must make arrangements to relieve the employee as soon as possible.
- (G) If an employee or applicant for an FTA Safety-Sensitive position has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason and has not been in the random selection pool during that time, the County must ensure that the employee or applicant takes a pre-employment drug test with a verified negative result before allowing the employee or applicant to perform safety-sensitive functions.

(h) Retesting of employees; collecting a new specimen after a dilute test result.

(1) *of employee with an alcohol concentration of 0.02 or greater but less than 0.04.*

- (A) The County must not allow an employee who is tested and found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:
 - (i) the employee's alcohol concentration measures less than 0.02; or
 - (ii) the start of the employee's next regularly scheduled duty period, but not less than 8 hours after the test.

- (B) Except as provided in paragraph (A) above, the County must not take any action against an employee based solely on the results of a test conducted under FTA authority showing an alcohol concentration of less than 0.04.
- (2) ***Retesting of employee after a canceled drug test.***
- (A) A canceled drug test is a test that has been declared invalid by the MRO and is neither a verified positive nor a verified negative test result. A canceled test includes a specimen rejected for testing by a laboratory.
 - (B) If a non-employee applicant's drug test is canceled, the County must require the applicant to take another pre-employment drug test.
 - (C) If an employee's drug test is canceled, the County must require the employee to take another drug test with a verified negative result before the employee is:
 - (i) transferred or reassigned to an FTA Safety-Sensitive position; or
 - (ii) allowed to return to safety-sensitive duties because of the possible use of prohibited drugs, prohibited alcohol use, or refusal to take a required drug or alcohol test.
 - (D) OMS must ensure that specimen collection is conducted under direct observation if the County receives a drug test result indicating that the employee's urine specimen test was canceled because it was invalid and the MRO has directed that the second collection must take place under direction observation.
- (3) ***Collecting a new specimen from an applicant or employee after a dilute test result.***
- (A) If the MRO reports that an applicant or employee had a verified dilute positive test, the County must treat it as a positive test result.
 - (B) The MRO will direct whether the new specimen is to be collected under direct observation or not.
 - (C) After a dilute negative test result, if a new specimen is collected for testing this second test will be the test of record. If this second test also produces a dilute negative result, no additional tests will be conducted.

- (i) ***Consequences for an employee of prohibited drug use, alcohol misuse, or refusal to take a drug or alcohol test.***
- (1) ***Consequences under FTA regulations.*** Under FTA regulations, the following are the required consequences for an employee who has a verified positive drug test result, violates the alcohol misuse prohibitions, or who refuses to be tested:
- (A) immediate removal from safety-sensitive duties; and
 - (B) referral to a Substance Abuse Professional for evaluation.
- (2) ***Consequences under County authority.***
- (A) Under County authority not derived from the FTA regulations, a department director must dismiss an FTA Safety-Sensitive employee with merit system status or terminate an FTA Safety-Sensitive probationary employee who:
 - (i) has a confirmed positive drug test result;
 - (ii) has a confirmatory alcohol test with an alcohol concentration of 0.04 or greater; or
 - (iii) refuses to take a drug or alcohol test.
 - (B) FTA regulations require the County to refer the dismissed employee to a Substance Abuse Professional for evaluation and treatment.
 - (C) If an FTA Safety-Sensitive employee tells a supervisor that they need help to resolve a problem associated with prohibited drug use or alcohol misuse:
 - (i) the department director must not propose to dismiss or terminate the employee unless the employee makes the admission:
 - (a) after the employee is approached by a supervisor who intends to inform the employee that the employee has been selected for testing, but before the supervisor has the opportunity to notify the employee that the employee has been selected for a required drug or alcohol test;
 - (b) after the employee learns that they have been selected for a required drug or alcohol test but

before the employee is officially notified of the required drug or alcohol test;

- (c) after the employee is notified of a required drug or alcohol test but before the employee is tested for drugs or alcohol;
 - (d) after the employee is tested for drugs or alcohol;
 - (e) after an accident;
 - (f) after a confirmed positive drug test result or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater;
 - (g) after a refusal to be tested for drugs or alcohol; or
 - (h) after conduct prohibited by Section 32-3 of these Regulations; and
- (ii) the supervisor must refer the employee to a Substance Addiction Counselor for evaluation, treatment, return-to-duty testing, and follow-up testing. These tests will be conducted under County authority and not under direct observation.
- (j) **Required referral, evaluation, and treatment.** For information about required referral, evaluation, and treatment see Section 32-3(i)
 - (k) **Effects of drug abuse and alcohol misuse.** See Section 32-3(j) for information about the effects of drug abuse and alcohol misuse.
 - (l) **Education and training programs.** See Section 32-3(l) for education and training programs and requirements for supervisor training.

Editor’s note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to alcohol misuse or drug abuse by employees covered by FTA regulations
Firefighter/Rescuer	None
OPT/SLT	34, Safety and Health
Police	None